



# PROGRAM

## 2018 Bergen Exchanges on Law & Social Transformation

Venue: **Bergen Resource Centre for International Development**, Jektviksbakken 31, Bergen

*Special focus areas:* **RIGHTS of the CHILD - HEALTH & the LAW**

### Day 1

#### Human Rights and Fair Priorities in Health

**Key Note Address: Norman Daniels\***

##### Roundtable

The right to health aims to secure for all the highest attainable standard of physical and mental health, but what when resource scarcity makes it impossible to provide optimal health care for the entire population? Can the right to health be useful in the pursuit of fair priorities in health, or does maximalist conception of health rights undermine efforts to advance justice in health?

Should we, when prioritising health resources, use other standards for effectiveness and costs of treatment with regard to the medical needs of children? What does the obligation to ensure the highest attainable standard of physical and mental health mean for disabled children? And when should children have autonomy over decisions regarding their own health – for example regarding gender-affirming treatment, male circumcision or blood-transfusion?

**Possible participants:** Ole Frithjof Norheim, Alicia Yamin ...

#### Political & legal determinants of sexual health: evidence of impact

#### Political & legal determinants of reproductive health: evidence of impact

These two roundtables present findings from the *LawTransform* research projects on “Political Determinants of sexual and reproductive health in Africa” and “Sexual and Reproductive rights Lawfare: Global Battles”. They will discuss dynamics of politicisation and legal change regarding sexual and reproductive rights, the effects of this on health service delivery as well as on sexual and reproductive health.

**Possible participants:** (Members from SSR lawfare projects)

#### Criminal justice and mental health

This roundtable discusses challenges arising from the way in which criminal justice systems and criminal law deals with issues concerning mental health (...)

**Possible participants:** Linda Grønning (responsible ... ask her to develop blurb)

Evening Session: (max 2 hours - followed by reception/social event)

## **The Role of Law in Global (and National) Health Governance - and the report of the Lancet Commission on "Health and the Law"**

Agenda 2030, and the Sustainable Development Goals, which followed the Millennium Development Goals, sets out an ambitious agenda on an array of issues of global health. The SDGs, as opposed to the MDGs, set out a universal framework that is applicable to high-income and low-income countries alike, and concentrates in inequalities. Achieving goals, such as in health, are explicitly acknowledged to be connected to other goals, such as sustainable production, gender equality, and effective and transparent institutions. The Lancet-Georgetown/O'Neill Commission on Global Health and the Law (to be released before the Exchanges) sets out the concept of legal determinants of health--akin to political and social determinants--and examines how law can be used to translate vision into action on sustainable development. Among other things, it is clear that law reform will be necessary to strengthen the governance of national and global health institutions, as well as to implement fair, evidence-based priority-setting on the path to Universal Health Coverage. A number of UN groups are also examining how legal reform and enforcement can be used to strengthen accountability in global health, and in particular the Un Secretary General's Independent Accountability Panel for the Global Strategy on Women's Children's and Adolescent Health (IAP) will be exploring the multiple layers of laws and institutions required to private sector accountability for their role in global health. This role goes beyond provision of services or medicines and commodities to influencing health, through direct consumption patterns, as well as creating social norms, and influencing political processes, as well as financing development. This brings into focus the tremendous array of legal forms and spaces, from regulatory frameworks to judicial enforcement to securities, tax and trade legislation in other countries. But there are many challenges to harnessing laws to effectively regulate the asymmetries of power and lack of accountability that pervades national health systems as well as global health architectures, due among other things to public incapacity and sometimes capture. Moreover, of course, often laws are punitive and discriminatory and have negative effects on both health of certain populations, as well as on inclusive democracy.

This panel will explore the potential and challenges of harnessing law, including international human rights law, to promote equity and accountability in health systems and global health governance. Discussion will include concrete experiences from different regions that offer lessons (positive and negative), as well as analysis of the global stage.

## Day 2

### Rights of the Child: international norms & national implementation

Anne Lindboe, Norwegian Ombudsman for Children \*

#### Keynote and roundtable

The United Nations' Convention on the Rights of the Child (UNCRC) places extensive obligations on governments to provide for the needs of children. This poses challenges for rich as well as for poor countries. The Norwegian Ombudsman for Children is tasked with overseeing the implementation of the Rights of the Child in Norway and we ask her to reflect on areas where Norway has work to do, with particular emphasis on *Child Poverty as a Human Rights Violation*. Article 27 of the UNCRC recognizes "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development." What does this mean in practice for a country like Norway. Is it a human rights violation when one in ten Norwegian children live in (relative) poverty, according to figures from The Norwegian Directorate for Children, Youth and Family Affairs, which also shows major geographic and group differences. Is this in violation of **children's protection against discrimination** (UNCRC §2)? And what are the State's obligations towards "undocumented" child migrants?

#### Possible participants:

- **Brian Sloan**, Robinson College, Cambridge, UK
- **Gillian Black**, Edinburgh Law School, UK.
- **Tarja Pösö**
- **Marit Skivenes/Karl Harald Søvig/Sonia Human**
- **Ioana Cismas**, University of Stirling Law School, UK.
- **Lize Mills**, Faculty of Law, University of Stellenbosch, South Africa.
- **Linda Elrod**, Washburn University, US
- .... **Malcolm?**

### Sexual harassment among children and youth

#### Roundtable

Investigating sexual harassment among children and youth, the Norwegian Ombudsman for Children conclude that "everyone knows of someone who has experienced it"<sup>1</sup> For the Ombudsman, the investigation is part of a broader focus on violence-free childhood as part of the right to health. Violence and abuse against children and youth – including sexual harassment and abuse from peers – is a major social challenge and an underestimated public health problem. This is a global problem. What role can law – including criminal law - play in addressing this?

**Possible participants:** Jørn Jacobsen,\* Camila Gianella ...

### Rights-based approaches to Child Protection Systems

(Guiding discretionary decision making - Child's best interest principle in legislation. Child Protection and Human Rights – Making professional judgements)

This round-table views child protection through a prism of children's rights and asks how the rights of children can and should influence and shape decisions that are made in different parts of the child protection system. This involves how assessments are made, decisions about preventive services including children with disabilities, about out-of-home placement, emergency placements, adoption and aftercare. It will be important to discuss whether and how the CRC should lead to different ways of working professionally. Today, we have most prominently seen the influence of the CRC in shaping demands towards the involvement of children in decision-making, but discussions are lacking with regard to further ways in which the CRC can shape decision-making in becoming professional in line with the CRC. In addition, there is a lack of discussion regarding how we balance the interests of different parties in the child protection system, like parents, foster parents and adoptive parents as other primary considerations.

The roundtable will include a focus on **how to build capacity on Children's Rights in Child Protection Systems?** The IDEA project aims to Improve Decisions for children by building capacity of professionals who represent children's interests in the child protection system to Empower children and Advocate for the advancement of children's rights in five partner countries (Ireland, Finland, Sweden,

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<sup>1</sup> <http://barneombudet.no/wp-content/uploads/2018/02/Barneombudets-rapport-om-seksuelle-krenkelser-enkeltsider-pdf-lowres.pdf> (only in Norwegian at present, but hopefully in English soon)

Estonia and Hungary). Lawyers representing children or children's interests will be the primary target group. There will be an emphasis on inter-disciplinary training and skills; to this end, the project team includes experts in both Law and Social Work from each of the five partner countries. The project is coordinated by University College Cork (Ireland) with partners from the University of Tampere (Finland), University of Szeged (Hungary), University of Gothenburg (Sweden) and University of Tartu (Estonia). The project runs from February 2017 - January 2019.

**Possible participants:**

- Staffan Höjer
- Flere fra prosjektet: Tarja Pösö, Kenneth Burns, Katre Luhamaa, m.fl.
- Elisabeth Bache-Hansen
- Marit Skivenes

Evening session (max 2hrs- followed by social event)

**Children's right to participation: models for justice systems and law-making<sup>2</sup>**

**Roundtable**

Children's right to participation raise many challenges and is often poorly implemented – not least in the justice system and with regard to law-making. This two-part roundtable presents innovative models.

In the first part we ask: How can children influence legislative change? Can "experts by experience" (children with experience from child protection services) play a meaningful role in such process? *Proffene* (the child/youth experts-by-experience) have changed how of children are viewed within the child protection service, and several of their ideas have been included in the draft of Norway's new Child Welfare Act. To introduce this part, representatives fo *Forvandlingsfabriken & Proffene* will give their perspectives on how they did it.

The second part of the roundtable focus on Scotland's unique approach to care and justice decision making for children and young people *The Children's Hearings*. The philosophy of the system was established in the Kilbrandon Report of 1964 and the Kilbrandon principles remain relevant today. The most fundamental principle being that children and young people who offend and those who require care and protection are equally deserving to be considered as children in need - the system takes an integrated, holistic approach to care and justice, with the child's best interest as the paramount consideration. A representative from the *Scottish Child Law Centre* will introduce this part of the discussion

**Possible participants:**

- Representatives from "Forandringsfabrikken & proffene" (youth/ staff)
- Other similar initiatives ...
- **Pro Bono group** representative (comments based on evaluation report)
- representative from **Scottish Child Law Centre**/knowledge of Children's Hearings
- Norwegian practitioner (Eks. Geir Kjell Andersland Fylkesnemda/konfliktrådet)
- **Tarja Pösö** (Tampere, Finland)
- **David Archard** (Queens University Belfast)
- **Brian Sloan** (Cambridge)

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<sup>2</sup> [http://barneombudet.no/wp-content/uploads/2013/09/bo\\_stemmerett\\_english\\_web.pdf](http://barneombudet.no/wp-content/uploads/2013/09/bo_stemmerett_english_web.pdf)

## Day 3

### Adoption without parental consent

This roundtable ask whether adoption without parental consent is a valid State interference or a violation of Article 8 in the European Convention on Human Rights (right to privacy and family life)?

**Possible participants:**

- **Kirsten Sandberg** UiO
- **Karl Harald Søvig** UiB
- **Christian Børge Sørensen** (Fylkesnemndsleiar Rogaland; University of Stavanger)
- **Lena L. Bendiksen** UiT
- **Brian Sloan** (Cambridge)
- Child protection practitioner?
- Socio-legal scholar

### Autonomy, Paternalism, and Justice - age limits

In most countries children - up to variable ages - are not legally allowed to vote, buy alcohol, have sex, marry, or have paid employment. What is the role of age limits in relation to children's rights? How do children's rights challenge parents', and how should they be balanced when they are in conflict?

A special focus in this double roundtable will be on the **age of consent** and **child marriage**. An increasing number of countries are banning child marriage, setting 18 as the age of marriage. Regarding the age of consent there is, however little agreement. In some countries is it as low as 12, most European (and many other) countries set it between 13 and 16, sometimes with proximity-in-age clauses. Some states in the USA and many African and Asian countries set it at 18, some even 19. India recently made sexual relations with girls younger than 18 statutory rape, including within marriage. Unequal age of consent for boys and girls and for hetero- and homosexual relations are frequent.

**Possible participants:**

- **David Archard** (Introductions/presentation)
- **Stine Jørgensen** (University of Copenhagen)
- **Jayna Kothari** (CLPR, Bangalore, India)
- **Ragnhild Muriaas/Vibeke Wang/Liv Tønnessen**

### Adolescent sexual and reproductive rights & health effects

Issues of adolescent sexuality are highly politicised in many parts of the world, with consequences for the sexual and reproductive right and health of young people. In Latin America (and elsewhere) comprehensive sexual education in schools and access to emergency contraception are highly politicised with significant consequences for teen pregnancy rates. ...

**Possible participants:** Camila Gianella ...

### Rights of transgender children

Laws relating to the change of legal gender vary radically between countries. Some countries have total bans on any change of gender, in other cases there are strict conditions, usually tying the change of legal gender to physical sex-change, and even where conditions are less severe, age limits often prevent children from changing their legal gender. Norway in 2016 moved from having one of the strictest laws in the world with regard to the change of legal gender, to being one of the most permissive, including with regard to transgender children (Children above 16 can make the decision to apply for change of legal gender on their own, based on their subjective gender identity, while children between 6 - 16 need parental consent. For children under 6, medical conditions apply). This roundtable will discuss the struggles for transgender rights generally, and the rights of transgender children in particular, in comparative perspective.

**Possible participants:** Jayna Kothari, Camila Gianella, Nicolas Orago ...

Afternoon session (followed by reception/social event)

Annual lecture on Law & Social Transformation

## Sally Engle Merry

Silver Professor of Anthropology, New York University College of Arts and Sciences

"Vernacularization of rights & the quiet power of indicators"

Day 4

### Litigating health rights – what happened with the mega-judgments?

The first decade of the millennium has witnessed a surge in structural cases decided by courts of the Global South regarding health rights and their social determinants. In widely discussed mega decisions adopted in India, Colombia or Argentina courts have experimented with a variety of procedural and remedial tools in environmental health, food or health systems design matters. A first generation of pioneer socio-legal studies have scrutinized the context of the cases, the weak and strong remedial approaches deployed by courts, and the cases' early direct and indirect effects. As the cases enter their second decade of life, time is ripe to reopen the conversation to comparatively assess courts strategies and performance. What are the challenges faced by courts and other actors dealing with protracted implementation processes? How have courts internal organizational capacities and resources evolved? Has the execution of the decision involved other courts or administrative bodies? How have participation, information and transparency mechanisms been shaped? What about communication strategies? How have the impacts of the mega cases evolved?

The panel will invite a number of active participants and researchers involved in the mega cases to discuss from a comparative perspective the transformations observed in the courts, governments and civil society after a decade of experimentation.

### Women on the Bench

How is it to be a woman judge? What are the incentives and obstacles that women face on the road to judgeship in different societies? And does it make a difference - to the operation of the court, its legitimacy or its judgments - whether there are women judges on a court - and how many they are? In this session **Ruth Rubio Marin** will interview women who have made it to the bench in different countries about their experiences. This is part of a new *LawTransform* project on "Women on the Bench"

### Judging democratic backlash

Many countries are currently experiencing a narrowing of democratic space. This frequently affects the court, both directly and indirectly. It often affects who are appointed (and not appointed) to the bench as well as the terms of their operation. Courts in some cases continue to serve a pro-democratic role, upholding rights and sanctioning violations - but they are also used by governments as part of their strategies to silence the opposition and ensure electoral victories. This roundtable forms part of a *LawTransform* project on *Breaking BAD: Backlash against democracy in Africa* and discusses the experiences of African courts in comparative perspective

## Children's Climate Litigation

### - Future Generations' rights to a healthy environment

#### Roundtable:

We see a growing number of court cases where children challenge the state for not acting responsibly to secure their (and future generations') rights to a healthy environment. Most of the cases have been lodged before courts in the USA but we also see in other parts of the world, including in Colombia. Are children lodging these cases really active participants or mere symbols? And what is the likelihood of winning these cases- and of having real world effects?

#### Possible participants:

Cesar Rodriguez-Garavito; Catalina Vallejo; Esmeralda ... Concerned Grandparents ...

## Evening session (max 2hrs- followed by social event)

### Adjudicating Child Rights

The **European Court of Human Rights** have decided a number of **Child protection cases** involving Norway. Cases involving the rights of children, and in particular cases concerning child protection and the right of **child asylum seekers** are also among the most controversial cases decided by the **Norwegian Supreme Court**. In 2015 the Norwegian Supreme court handed down to quite contradictory judgments regarding child protection – by the same judge. What does this tell us, and what are the implications for practice. In this panel judges and researcher discuss these cases in comparative perspective.

#### Possible participants:

- Judge(s) from Strasbourg and from the Norwegian Supreme court
- **Karl Harald Søvig**
- **Katre Luhamaa**

## Day 5

### Corruption and health

Corruption is a major health risk. It takes different forms – from bribes and charging of unofficial fees, via sale of fake or substandard drugs, to corruption in public procurement of drugs and infrastructure, and diversion of public health funds. Corruption is one of the biggest threats to universal health coverage and estimates indicate that in some countries, as much as 80 per cent of non-salary health funds disappear before reaching local health facilities. This round-table discusses how the scale and form of corruption vary between health systems, and some of the efforts taken to address it.

**Possible participants:** Monica Kirya or others at U4 ...

### Migrants health rights

While international human rights instruments recognize the right to health as a basic human right, access to health services is often precarious for migrants, and particularly for those who do not have legal residency. They are regularly denied access to services, even in countries with universal health care systems – who have ratified all the relevant international human rights treaties - such as Norway. And with increasingly strict policies of migration and asylum, the situation is growing progressively worse. This roundtable discusses the health rights of migrants in Norway and other countries, and whether the situation constitutes a human rights violation.

**Possible participants:** Representative for *Helsehjelp for papirøse*; *Henriette Sinding Aasen* ...

## The right to water, urban governance & health

Water is an increasingly scarce resource with pressures from growing populations and industrial developments depleting and polluting water resources, and with changes in the climate exacerbating the situation. Some of the world's largest cities – including Sao Paulo, Cape Town, Bangalore, Mexico City, London and Miami - are facing severe scarcity of drinking water, posing severe risks to human life and health. This roundtable discusses the challenges and to what extent the adoption of the right to water as a human right, can contribute towards better and more just water governance. This panel is linked to the *LawTransform* project on "Water Rights"

**Possible participants:** John-Andrew McNeish, Bruce Wilson, Lara Cortes, Jackie Dugard .....

## Law & Technology

Technology is changing the law and the legal profession innumerable ways. This roundtable discusses some of the most pertinent issues – from challenges of developing legal regulations that can adequately handle the threats that new technologies are posing to our privacy, to computer judging that look set to change the way in which judicial institutions operate and the work of the legal profession.

**Possible participants:** Jørn Ø. Sunde, Krisin Bergtora Sandvik, Malcolm Langford